

(916) 323-7715

June 7, 1984

Mr. William G. Kelley
Box 636
Laguna Beach, CA 92652

Dear Mr. Kelley:

This is in response to your May 31, 1984, letter wherein you asked what, if any, provision there is in the law for gaining property tax exemption for property which is owned by a charitable organization which is used to provide low cost housing for low income people.

As you are apparently aware, Revenue and Taxation Code Section 214 et seq. provides for the welfare exemption from property taxation for properties owned and operated by organizations organized and operated for charitable purposes and used exclusively for charitable purposes if certain requirements are met. With respect to housing, Section 214 states that property used exclusively for housing and related facilities for elderly or handicapped families and financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. 1701g) or Section 236 of Public Law 90-448 (12 U.S.C. 1715z) and owned and operated by charitable organizations meeting all of the requirements of Section 214 shall be deemed to be within the exemption. Enclosed in this regard is a copy of a February 10, 1982, letter to the Department of Housing and Urban Development wherein certain exemption requirements are discussed.

Additionally, the Board and the staff have been of the opinion that federally financed elderly or handicapped housing other than Section 202 or Section 236 housing can be eligible for the exemption so long as there are some charitable aspects in conjunction with the providing of the housing. And charitable housing for elderly or handicapped families generally has been eligible for the exemption since 1950 (Fredericka Home v. San Diego County, 35 Cal. 2d 789, and thereafter, Fifield Manor v. Los Angeles County, 138 Cal. App. 2d 1, and The Samaritans of Santa Barbara, Inc. v. Santa Barbara County, 216 Cal. App. 2d 341).

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As to housing other than housing for elderly or handicapped families, the Board and the staff have been of the opinion that low cost housing provided for low income families is not eligible for the exemption where the occupants pay a rental that provides for retirement of the cost of the project and also for payment of maintenance costs. In such instances, the occupants, in effect, get what they pay for, and the gift element necessary to a finding that the owning organization is engaged in a charitable endeavor is lacking. Such is discussed generally in Martin Luther Homes v. Los Angeles County, 12 Cal. App. 3d 205, wherein the Court held that even housing for elderly families was not exempt when the gift element was lacking.

Finally, we are aware of no California authority to the effect that low cost housing provided for low income families is used for charitable purposes within the meaning of Section 214.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

Enclosure

bc: Mr. Gordon P. Adelman
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Mr. Verne Walton
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Legal Section